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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,228	02/11/2004	Steven Kunreuther	K&B-24	9902

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EXAMINER

SILBERMANN, JOANNE

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/775,228	<b>Applicant(s)</b> KUNREUTHER, STEVEN	
	<b>Examiner</b> Joanne Silbermann	<b>Art Unit</b> 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 15-19 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 15-19, 28-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 15-19 and 28-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rethmeier, US #3,546,798 in view of Portmore, US #1,089,154.

3. Rethmeier teaches hangtags comprising connecting elements 32 extending between ends of adjacent hangtags (Figure 2) and spaced apart by openings 21. The connecting elements are severable by a pull force. Opening 36 in the hangtags body anchors fastener 37. The hangtags are connected by at least two or three connecting elements. Each tag includes an end having a substantially straight edge extending between corners on opposite sides (Figure 2). The connecting elements extend substantially the entire length of the tag.

4. Rethmeier does not teach the connected portion as being less than the open portion. Portmore teaches a separable tag including several separable portions. These portions are connected by a "plurality of widely separated connecting portions (page 1 lines 45-46). The separation area shows connecting portions c and (non-circular) openings c' along the entire edge of the tag. The openings are at least three times as long as the connecting portions (page 1 lines 76-78) and occupy a relatively small part

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of the total edge (page 1 lines 98-100). The connecting portions resist accidental stress, but allow a portion to be torn off when desired (page 2 lines 26-33).

5. It would have been obvious to a person having ordinary skill in the art to utilize the particular spacing and sizing of the connecting elements as shown in Portmore on the tag of Rethmeier to provide a tag having a portion that may be removed when necessary but will not become inadvertently separated.

6. Rethmeier does not specifically teach a roll of tags, however this is well known in the art. Many tags, labels, etc. are produced in rolls. It would have been obvious to one of ordinary skill to form a roll of such labels so as to provide a large number of labels in a convenient, easy to use form. It also would have been obvious so as to provide the labels in a form in which they will not become inadvertently separated.

7. Rethmeier and Portmore do not specifically teach the body as having rounded corners. Matters relating to ornamentation only, and having no mechanical function, cannot be relied on where claims are not directed to design but are structural claims. Also, it would have been obvious to one of ordinary skill to utilize whatever shape opening is necessary in the body to best accommodate the fastener. It also would have been obvious to utilize rounded corners so that the edge would not be sharp or become torn.

8. Rethmeier and Portmore do not specifically describe the connecting portion as being a certain percentage of the spaced portion. Portmore states that the spaced portion is "more than three times as long" as the connecting portion, that the connecting portion occupies "a relatively small part" of the edge, and that the spaced portion is

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"much longer than" the connecting portion. It would have been obvious to one of ordinary skill to make the connecting portion less than 5, 10, or 25% of the spaced portion since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Also, it would have been an obvious matter of design choice to pick such a value since such a modification would have involved a mere change in size of a component. A change in size is generally regarded as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Response to Arguments***

10. Applicant's arguments filed December 9, 2005 have been fully considered but they are not persuasive. In response to the amendments to the claims, a new reference has been applied.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joanne Silbermann  
Primary Examiner  
Art Unit 3611

js  
09 February 2006